

Task Order # 1
Statement of Work
Financial Analysis Expert Support for Superfund Enforcement Cases

Estimated Period of Performance

The period of performance for the Task Order shall extend from October 1, 2006 through September 30, 2007.

Background

The Office of Site Remediation Enforcement (OSRE) in the Office of Enforcement and Compliance Assurance (OECA) has the primary responsibility for enforcement of the Comprehensive Environmental Response, Compensation and Liability Act, (CERCLA). OSRE serves as the primary contact for all enforcement activities with the Regional Superfund offices. Many of the Agency's enforcement actions involve significant financial analysis issues.

CERCLA (also known as Superfund) is a comprehensive statute that grants the President broad power to command government agencies and private parties to clean up hazardous waste sites. CERCLA Sections 104 and 106 provide the framework for federal abatement and enforcement actions that the President, the EPA as his delegated agent, or the Attorney General initiates. These actions typically require private parties to incur substantial costs in removing hazardous wastes and responding to hazardous conditions. CERCLA authorizes EPA (and certain other federal agencies) to address imminent and substantial endangerment's to human health and the environment. The EPA Superfund Enforcement program focuses on securing agreements with potentially responsible parties (PRPs) to conduct or finance the cleanup of hazardous substances from the environment. EPA negotiates agreements with PRPs to conduct site investigations, to perform remediation at contaminated sites, and to recover the costs of site-work performed by EPA. If a responsible party does not agree to a negotiated settlement, EPA can issue a unilateral administrative order to compel the PRPs to perform the work, or EPA can perform the work itself and initiate a civil action through the Department of Justice to pursue the PRPs through the federal court system to recover the cost of the work.

In addition, the Superfund Enforcement program monitors compliance with settlements and orders, and if a party is out of compliance with an order or settlement, takes action to bring them into compliance. Such action may include referring the case to the Department of Justice for enforcement, assessing penalties, and/or taking over the work. Many of the Agency's Superfund enforcement actions involve significant financial issues.

Purpose

The purpose of this Task Order is to obtain the services of expert financial analysts for OSRE and EPA Regional enforcement offices to support Superfund enforcement cases at every stage of enforcement actions. The COTR will include specific case instructions in the technical directives. The contractor may be asked to perform one or more of the tasks described below in support of EPA enforcement activities involving a particular Superfund Site. The following tasks describe the type of activities that will be assigned in the technical directives.

Task 1. Financial Analysis of Individuals

The contractor shall analyze the ability of individual PRPs (including sole proprietors or business partners) to contribute to financing response costs at a Superfund site. The contractor will use individual tax returns, individual financial statements and other financial information provided by the PRP to EPA, as well as available public documents, to provide EPA with advice regarding the PRPs ability to contribute to response costs at the site.

Task 2. Financial Analysis of Business PRPs

The contractor shall analyze the ability of business PRPs to contribute to financing response costs at a Superfund site. The contractor shall use Federal tax returns, business financial statements and other financial information provided by the PRP to EPA. In addition the contractor shall use available public documents and other sources of business information, as applicable to the business PRPs, to provide EPA with advice regarding the PRP's ability to contribute to response costs at the site.

Task 3. Financial Analysis of Government Organizations

The contractor shall analyze the ability of PRPs who are government organizations, such as municipalities, counties, state agencies or universities, to contribute to financing response costs at a Superfund site. The contractor shall use financial statements and other financial information provided by the PRP to EPA, as well as available public documents, and shall apply principals of government finance to provide EPA with advice regarding the PRP's ability to contribute to response costs at the site.

Task 4. Financial Analysis of Non-profit Organizations

The contractor shall analyze the ability of PRPs who are non-profit organizations, either government or non-governmental organizations, such as educational institutions, hospitals and service organizations, to contribute to financing response costs at a Superfund site. The contractor shall use financial statements and other financial information provided by the PRP to EPA, as well as available public documents, and shall apply accounting principals applicable to

non-profit organizations to provide EPA with advice regarding the PRP's ability to contribute to response costs at the site.

Task 5. Review and Analyze Financial Assurance Documents

The contractor shall review and analyze financial assurance documents provided to EPA by PRPs to fulfill financial responsibility obligations under Superfund settlements. The contractor will advise EPA whether the economic assumptions used to calculate the present value of the cost estimates are acceptable or unrealistic and whether the financial assurance documents satisfy EPA's criteria for acceptability of such financial assurance documents, based on the requirements established by the EPA enforcement attorneys working on the case and EPA CERCLA financial assurance guidance.

The contractor may be asked to assist EPA in reviewing the following types of financial assurance documents: trust agreements, surety bonds, letters of credit, and corporate guarantees or self-guarantees, using an EPA financial test method or other method of financial assurance as requested by EPA.

Task 6. Financial Analysis of Complex Corporate Organizations

The contractor shall research and analyze the history and organizational structure of complex corporate organizations. The contractor will use corporate Federal tax returns, other available financial statements and other information provided by the PRP to EPA. In addition, the contractor will use available public documents and other sources of business information. The contractor will assist EPA in understanding the relationships among existing corporations and their potential liability for Superfund response costs. The analyses may focus on a variety of issues such as an analysis of the operation and control of a PRP by another person, the ability of a person to undercapitalize a PRP, an evaluation of the fair market value of related party transactions, the ability of a PRP to limit or reduce its earnings for the benefit of a different person, and the ability of a PRP to transfer an investment or other asset to an entity that may not be subject to CERCLA authority.

Task 7. Assist with Settlement Negotiations with Superfund PRPs

The contractor shall assist EPA enforcement teams (including DOJ enforcement attorneys) with negotiating with PRPs regarding financial issues in Superfund enforcement cases. This assistance may include assistance in drafting information requests and interrogatories, reviewing draft settlement documents, participating in conference calls and meetings with PRPs, and providing advice to EPA and DOJ attorneys during depositions.

Task 8. Provide Expert Witnesses in Administrative Hearings or Judicial Cases

The contractor shall provide financial analysts qualified to testify as expert witnesses in mediation, administrative hearings or judicial trials in Superfund enforcement cases. The financial analysts shall assist EPA and DOJ enforcement attorneys to prepare for administrative and civil litigation of financial issues, including preparing expert reports and affidavits, reviewing documents provided by defense counsel and drafting questions for examining defense witnesses.

Task 9. Review Compliance with Superfund Settlements and Orders

The contractor shall assist EPA enforcement staff in reviewing compliance with Superfund settlements and orders involving financial issues (including financial assurance issues). Such compliance reviews may include assisting EPA to calculate the economic benefit derived by liable parties from non-compliance with CERCLA requirements.

Task 10. Develop and Test Financial Analysis Tools

The Contractor may be asked to work with OSRE and Regional case teams to develop and test the usefulness of financial analysis tools (such as spreadsheets and databases) in the context of providing financial analysis expert support for Superfund cases.

This Statement of Work sets out general requirements for this Contract. Individual cases will be assigned by the Contract Officer's Technical Representative (COTR) in technical directive documents.

Estimated Twelve-month Case Load

Based on past experience, OSRE anticipates that the contractor will work on about 39 different cases during this 12-month period of the task order. Of these 39 cases we expect about 15 to 20 cases will be continuing cases and about 20 to 25 cases will be new cases. OSRE expects that about 26 of these cases will be simple or routine cases, about 10 cases will be of intermediate complexity, and about 3 cases will be complex cases. One or more of the complex cases may require contractor support at pretrial depositions or at trial.

At times, the Agency's work will be subject to strict and/or unforeseeable deadlines, and the Agency will request that the Contractor expedite its support. Therefore, as necessary and upon issuance of a written technical direction from the Project Officer, the Contractor will provide financial analysis advice, including a written analysis, within a short turnaround period (e.g., 48 hours).

The contractor shall submit all work products for review and approval to the COTR. The appropriate EPA enforcement case staff person and the COTR will review all deliverables in

draft form and provide revisions and/or comments to the contractor. The contractor shall prepare the final deliverables incorporating EPA's comments. EPA will make all final determinations and decisions after a critical and close review of the contractor's work product. All work products resulting from the performance of this contract are the property of EPA. The contractor shall not publish or otherwise release, distribute or disclose any work product generated under this contract without obtaining EPA's express written approval.

Reports

In most cases the contractor will be asked to provide written reports of the analysis conducted and the contractor's advice to EPA. The contractor shall use all available relevant information, including documentation received from the PRP. The contractor shall document all aspects of any analyses performed under the contract, in order to maintain a clear and complete record that reflects the process by which the contractor reaches its conclusions.

In the reports the contractor shall generally (a) summarize the substance of the financial issues being addressed; (b) list documents received from EPA or from a third party (such as a PRP) which were reviewed and formed a basis for the financial analysis; (c) describe the methods of financial analysis used to arrive at recommendations; (d) identify relevant EPA guidance documents and how they were applied in the analysis and recommendations; (e) explain policy or action alternatives, if any, and (f) otherwise make clear the methods and considerations upon which recommendations are based.

The designated COTR will review and approve all contractor deliverables. The COTR may participate with contractor personnel in conference calls, meetings or other activities under the contract. When appropriate, EPA may utilize feedback, learning and customer satisfaction survey tools and tests to monitor success.

General Advice and Instruction

The contractor will be expected to confer frequently with the EPA and DOJ enforcement case teams with whom they are working on enforcement cases about the issues that arise during the tasks the contractor is assigned to work on. In addition, the contractor is expected to explain the economic principals they are applying and the methods of analysis they are using in these assigned cases to the EPA and DOJ enforcement teams with whom they are working.

Superfund Site Account Charging

The contractor shall create a database that is capable of maintaining billing records for each case that the contractor works on. Superfund cases will be identified by the site name and Superfund site account number identified in the technical directives. Monthly statements will identify charges by name and Superfund site account numbers. Monthly Invoices shall be prepared and submitted in accordance with Attachment 2 of the Contract. In addition, the

contractor will provide the COTR with an Excel Spreadsheet which lists the monthly charges by Superfund site names and Superfund site account numbers.

Acceptable Quality Level

Ninety percent of the draft deliverables and 100% of the final deliverables provide the analysis and products defined in the technical directives. Work is completed in accordance with the technical directives and within the defined schedules and the cost estimates in the EPA in the technical directives.